

CLAIR R. CALDWELL ET AL.

IBLA 79-331

Decided August 16, 1979

Appeal from decision of Oregon State Office, Bureau of Land Management, holding mining claims to be abandoned and void. OR MC 2113, etc.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment – Mining Claims: Abandonment

Under 43 CFR 3833.2-1(a), the owner of unpatented mining claims located before Oct. 21, 1976, in the calendar year 1968, and recorded with the Bureau of Land Management (BLM) in 1977, must file affidavits of assessment work or notices of intention to hold the mining claims prior to Dec. 31 of each calendar year after recording, or the claims will be conclusively deemed to have been abandoned under 43 CFR 3833.4(a).

2. Administrative Authority: Estoppel – Estoppel – Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice to Hold Mining Claims

Reliance upon erroneous advice or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute or relieve him of the consequences imposed by a statute for his failure to comply with its requirements.

APPEARANCES: Clair R. Caldwell, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Clair R. Caldwell, Agnes N. Caldwell, Robert Smith, and Jay Smith have appealed from a decision, dated March 29, 1979, of the Oregon State Office, Bureau of Land Management (BLM), which declared their mining claims to be abandoned and void pursuant to 43 CFR 3833.4 because no annual assessment statement or notice of intention to hold the mining claims was filed for calendar year 1978.

The eight mining claims involved ^{1/} were located in July 1968. Copies of the location notices were first recorded with BLM August 18, 1977, in accordance with the requirements of section 314 of the Federal Land Policy Land Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

Appellants assert that they did not timely file the necessary documents with BLM because of misinformation from BLM. They state:

The reason for the delay in filing of Proof of Labor for year of 1978, is due to misleading information contained in the brochure issued by the Mining Claim Recordation Office, Bureau of Land Management, 729 N.E. Oregon Street, Portland, Oregon 97208, which states "IF YOU LOCATED A MINING CLAIM BEFORE October 22, 1976. . . YOU HAVE UNTIL October 21, 1979 TO FILE WITH THE BLM."

In order to expedite the papers thru the office of the BLM we elected to file early and did so on August 18, 1977. We filed Proof of Labor to date at that time despite the fact that we had until October 21, 1979 before cancellation time. We have registered the 1978 Proof of Labor form with the Baker County Court House as of August 30, 1978, with the understanding from the BLM office at Baker, Oregon that we had until October 21, 1979, to file with the BLM in Portland, Oregon.

[1] The provisions of FLPMA, 43 U.S.C. § 1744(a) (1976), require that

^{1/} The name and serial number of claims involved are: Highboy OR MC 2113, Hardly Able OR MC 2114, Old Faithful OR MC 2115, Thursday Surprise OR MC 2116, Cabin Claim OR MC 2117, No Name OR MC 2118, Ponderosa OR MC 2119, and Lucky Friday OR MC 2120.

... the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection.

The applicable regulation, 43 CFR 3833.2-1(a)(1) further states specifically:

The owner of an unpatented mining claim located on Federal land, excluding land within units of the National Park System, on or before October 21, 1976, shall file before October 22, 1979, and prior to December 31 of each calendar year following the calendar year of recording in the proper BLM office pursuant to this subpart evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. [Emphasis added.]

Although FLPMA allows 3 years until 1979 for filing for claims located before October 21, 1976, where the owner has recorded his claim with BLM, 43 CFR 3833.2-1(a)(1) specifically requires an assessment notice or a notice of intention to hold to be filed in the year following the year of recording. In this case the claims in question were recorded with BLM in 1977. Accordingly, appellants should have filed the required notices no later than December 31, 1978. When these documents were not received by that date, the claims were properly deemed conclusively to have been abandoned. Warren D. Elmore, 42 IBLA 91 (1979); Charles and Peter Carress, 41 IBLA 30 (1979).

[2] It is unfortunate that appellants misinterpreted the limited information in the "Notice to Mining Claim Owners" received from BLM. That notice did not purport to be all-inclusive, pointing out that "complete instructions may be obtained by contacting the above Recordation Office." Moreover, the brief and summary explanation set out in that notice cannot replace the exact requirements of the statute and regulation. As has been held many times, and as the pertinent regulation provides, reliance on erroneous advice by BLM employees cannot estop the United States or confer on an applicant any right not authorized by law. Paul S. Coupey, 35 IBLA 112, 116 (1978); Charles M. Brady, 33 IBLA 375 (1978); Belton E. Hall, 33 IBLA 349 (1978); Northwest Citizens For Wilderness Mining Co., Inc., 33 IBLA 317 (1978); Charles House, 33 IBLA 308 (1978), and cases cited; 43 CFR 1810.3(b) and (c). Thus, the notice cannot relieve the appellants of their obligation to comply with the filing requirements of the statute.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

Edward W. Stuebing
Administrative Judge

I concur:

Joan B. Thompson
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

I concur in the result. While the Ninth Circuit and others have held that an estoppel could lie against the Government in the proper case, 1/ appellants here have made no showing of specific facts which would justify invocation of the doctrine.

Joseph W. Goss
Administrative Judge

1/ Edward L. Ellis, 42 IBLA 66 (1979); Public Service Company of Oklahoma, 38 IBLA 193, 203-10 (1978) (dissent). In Davis, Administrative Law of the Seventies, §§ 1700-03, 399-404 (1976), 130-32 (Supp. 1978), it is assumed that estoppel should be applied under certain circumstances.

